IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.6685 OF 2005

Baban Namdeo Landge. ... Applicant.
Versus.
The State of Maharashtra. ... Respondent.

Shri P.M.Vyas i/by Shri S.R.Singh for the Applicant.

Ms.S.D.Shinde, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 18th October, 2005.

P.C.:

1. Heard the learned Advocate for the Applicant and the learned A.P.P. for the State.

2. This is an application for anticipatory bail in an offence registered under sections 420, 406 read with section 34 of the Indian Penal Code. An offence has been registered on the basis of the complaint filed by the Commissioner of Social Welfare, Maharashtra State. In the F.I.R. the allegation is that the grant of Rs.2,83,86,000/- was released by the State Government in favour of the Cooperative Housing Society known as Phule-Ambedkar Cooperative Housing Society, Bhosari, Pune. The allegation is that large amount out of the said amount was parted with in favour of the Applicant.

3. The case of the Applicant is that the land in question was allotted to him by the State Government

under 12.5% scheme in lieu of his own land which was acquired for the public purpose. There is a lease executed by Pimpri-Chinchwad New Town Development Authority in favour of the Applicant in respect of the said land. According to the case of the Applicant on 29th May 1997 an agreement for sale was executed by him in favour of the society. There is another agreement for sale executed by the Applicant in favour of the said society on 10th June 1997 which has been duly registered. It is the case of the Applicant that under the second agreement, the possession of the land was handed over to the society. According to the case of the Applicant, he received a sum of Rs.36 lakhs from the society by way of consideration and a cheque in the sum of Rs.17 lakhs issued by the society has been dishonoured. While rejecting the Application for anticipatory bail, the learned Additional Sessions Judge by order dated 23rd September 2005 observed that considering the fact that within a short time two agreements are executed and the Applicant has accepted large amount without parting with possession of the said land in favour of the society shows that primafacie there is material on record to indicate involvement of the Applicant and the office bearers of the society in the crime.

4. It is the case of the Applicant that under the second agreement executed on 10th June 1997 possession

of the property was handed over to the society. He submitted that the lease deed executed in favour of the Applicant itself shows that the Applicant had authority to transfer the land after obtaining requisite permission from the lessor. He submitted that the observation of the learned Sessions Judge that the possession is not handed over to the society is factually incorrect. He submitted that as the entire case is based on the documents, the custodial interrogation of the Applicant is not necessary.

5. The learned A.P.P. has produced for my perusal the evidence collected during the investigation.

6. I have considered the submissions. After the submission of the learned Counsel for the Applicant was concluded, I made a query to the learned Counsel for the Applicant as to whether the Applicant is maintaining that he handed over possession of the land to the society under the second agreement dated 10th June 1997 and whether today also the society is in possession. After taking instructions from the Applicant, who is stated to be present in Court, the learned Counsel for the Applicant stated that the Applicant had handed over possession of the land in question in favour of the society under the second agreement.

7. The document of lease executed in favour of the

Applicant contained a stipulation that the allottee shall not sell or transfer or part with possession without the previous written consent of the lessor. The first agreement is allegedly executed by the Applicant in favour of the society on 29th May 1997. The Second agreement is dated 10th June 1997. Prima-facie there is a specific clause in the second agreement which records that the possession was handed over by the Applicant to the society. It is pertinent to note that in the complaint filed on 8th September 2003 under section 138 of the Negotiable Instruments Act, 1881 by the Applicant against the society, the Applicant has clearly asserted that the actual physical possession of the land in question is with the Applicant. Thus, prima-facie material on record shows that under the two agreements executed within a short span of time, the Applicant is shown to have received large amount from the society out of the Government grant allotted in favour of the society. Serious doubt is created regarding the stand taken by the Applicant as regards handing over possession of the land to the society. Therefore, there is no reason to take a different view from the view taken by the learned Sessions Judge, Pune. No case is made out for grant of anticipatory bail. The Application is rejected.

8. At this stage the learned Counsel appearing for the Applicant states that ad-interim relief granted may

be extended for a period of four weeks to enable the Applicant to approach higher Court. The said prayer is opposed by the learned A.P.P. Considering the facts and circumstances of the case, ad-interim relief granted on 10th October 2005 will continue to operate for a period of three weeks from today.

Judge.